

See Dissenting Opinion

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO CAMPOS,

Defendant and Appellant.

E074550

(Super.Ct.No. INF1600706)

OPINION

APPEAL from the Superior Court of Riverside County. Dean Benjamini, Judge.

Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Antonio Campos, filed a motion for resentencing pursuant to Penal Code section 1385 requesting the court retroactively strike the firearm enhancement pursuant to Senate Bill No. 620 (2017-2018 Reg. Sess.), which the court denied. After defendant filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potentially arguable issue: whether the court erred in denying defendant's request that it strike the firearm enhancement. We affirm.

I. PROCEDURAL BACKGROUND¹

By felony information, the People charged defendant with attempted, premeditated murder (Pen. Code §§ 664, 187, subd. (a), count 1);² assault with a firearm (§ 245, subd. (a)(2), count 2); assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4), count 3); robbery (§ 211, count 4); and active participation in a criminal street gang (§ 186.22, subd. (a)). The People additionally alleged, with respect to counts 1, 2, and 4, that defendant personally and intentionally discharged a firearm (§§ 12022.53, subd. (c), 1192.7, subd. (c)(8)); a principal personally used a firearm (§ 12022.53, subds. (b), (e)); and defendant committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). As to count three, the People alleged defendant committed the offenses for the benefit of,

¹ The facts of the offenses are not included in the record and are not relevant to any issue that could be raised in this appeal.

² All further statutory references are to the Penal Code unless otherwise indicated.

at the direction of, or in association with a criminal street gang. (§ 186.22, subd. (b)(1)(A).)

On August 17, 2017, pursuant to a plea agreement, defendant pled guilty to counts 2 through 4. Defendant additionally admitted that, with respect to the count 4 offense, a principal used a firearm (§ 12022.53, subds. (b), (e)), and that he committed the offense for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)).

On the same date, pursuant to the plea agreement, the court sentenced defendant to an aggregate term of imprisonment of 27 years consisting of the following: the upper term of five years on count 4; 10 consecutive years on the firearm enhancement; 10 consecutive years on the gang enhancement; and one-third the midterm, one year consecutive, on counts 2 and 3 each. The court dismissed the remaining counts and enhancements on the People's motion.³

On January 3, 2020, defendant filed a motion for resentencing pursuant to Penal Code section 1385 requesting the court retroactively strike the firearm enhancement pursuant to Senate Bill No. 620. The court denied the request noting, "SB 620 is not retroactive other than cases which are not yet final on appeal."

³ Defendant did not appeal the judgment.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (*People v. Taylor* (2020) 43 Cal.App.5th 1102, 1114 [Senate Bill No. 620 applies retroactively only to convictions which are not final].)

III. DISPOSITION

The order denying defendant's motion for resentencing pursuant to Penal Code section 1385 is affirmed.

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McKINSTER

J.

I concur:

RAMIREZ

P. J.

[*P. v. Campos*, E074550]

MENETREZ, J., Dissenting.

The appellate review procedures under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), in which we review the record ourselves to determine whether there are any arguable issues, apply “only to a defendant’s first appeal as of right.” (*People v. Thurman* (2007) 157 Cal.App.4th 36, 45; *People v. Serrano* (2012) 211 Cal.App.4th 496, 498 (*Serrano*).) *Wende/Anders* review is highly unusual and rooted in the constitutional right to counsel, and courts have repeatedly declined to apply it in other contexts. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 554-555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535; *In re Sade C.* (1996) 13 Cal.4th 952, 959; *People v. Kisling* (2015) 239 Cal.App.4th 288, 290; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425; *People v. Taylor* (2008) 160 Cal.App.4th 304, 307-308; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570; 579.) Because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, appellant has no right to *Wende/Anders* review. Because appellant’s counsel filed an opening brief raising no issues, and appellant was notified but did not file a supplemental brief, we should not affirm but rather should dismiss the appeal as abandoned. (*Serrano*, 211 Cal.App.4th at pp. 503-504.) I therefore respectfully dissent.

MENETREZ

J.